IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1223 OF 2005
Along with
Civil Application No.1617 of 2006

Shri Deoram Baburao Varkad, .. Appellant.
Vs
1. Smt Gangubai Balwant Varkad and
ors. .. Respondents.

Mr U.B.Nighot, for the appellant.
Mr T.D.Deshmukh, for respondent nos 1 to 6, 8A,8B,8D,8E, 10 and 13.

CORAM : D.B.BHOSALE,J.
DATE : 20.02.2007

PC:

1. Heard the learned counsel for the parties.

2. The concurrent judgments of the courts below, by which the suit instituted by respondent nos.1 to 6 for partition stands decreed, are under challenge in the instant appeal. Mr. Nighot, learned counsel for the appellant-defendant 1D, submitted that the tenanted properties, bearing survey nos 606/1 and 605/5, were his exclusive properties and not of the joint family, as claimed by the plaintiffs and, therefore, were not liable to be partitioned. He further submitted that an issue of joint family tenancy ought to have been framed and referred to the tenancy authorities under the provisions of the B.T. & A.L. Act. Mr.Deshmukh, learned counsel for the respondents, on the other hand,

submitted that such plea was neither raised in the pleadings nor argued before the courts below. I perused the judgments of the courts below and other material placed before me. It appears that this issue was not raised before the courts below. Apart from that, the record shows that the brothers of the appellant had not relinquished or surrendered, as alleged by the appellant-defendant, their tenancy rights. In view thereof, the courts below have rightly observed that the properties were purchased under the provisions of the B.T. & A.L.Act by the appellant on behalf of the joint family. I find no reason to interfere with the findings of facts recorded by the courts below. The second appeal accordingly stands dismissed. As a consequence thereof, the civil application stands disposed of.

(D.B.BHOSALE,J.)